D.B. CIVIL SPECIAL APPEAL(W)NO.1320/2006

Santosh Devi
Vs.
S.T.A.T & Ors.

DATE OF ORDER :: 07-03-2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Satish Khandelwal, for the appellant.
Shri Swaraj Sharma, for the respondent.

Condonation application has been put up for consideration. However, we looked into merit of the case so that condonation may not be a futile exercise. There is also an application seeking leave to appeal as the appellant was not party to the writ petition, SBCWP no.5710/2000, giving rise to this appeal. Accordingly, heard counsel for the appellant.

The writ petition was preferred by one Naresh Kumar challenging the order of the State Transport Appellate Authority dated 24.11.2000 by which grant of permit under order of the Regional Transport Authority dated 3.2.1999 was cancelled and the matter was remitted to the Authority for fresh consideration.

The case of the appellant is that during pendency of the writ petition, on 9.12.2004 the permit previously held by said Naresh Kumar was transferred to her. Dismissal of the writ petition amounting to affirmation of the order of the State Transport Appellate

Authority may create difficulty to the appellant who is operating the vehicle on the strength of transfer from Naresh Kumar.

After hearing counsel for the parties, we are not inclined to entertain this appeal. We do not wish to express any opinion on merit of the case but would like to observe that the appellant having allegedly acquired her rights during pendency of the case, she can not claim better rights, and she should have intervened in the proceedings before the Single Bench. In any view, she could apply for review of the order as held by the Supreme Court in Shivdeo Singh and others Vs. State of Punjab & others, AIR 1963 SC 1909. It goes without saying that the impugned order of the learned Single Judge dismissing the writ petition of Naresh Kumar per se is not binding on the appellant though setting aside the order of the State Transport Appellate Authority has put a question mark on the validity of the permit presently held by the appellant. In Shivdeo Vs. State of Punjab (supra), it was held by a Constitution Bench of the Supreme Court that application filed under Article 226 of the Constitution of India for impleadment and re-hearing of the petition is maintainable. We thus think that no purpose would be served by formally condoning the delay and granting leave to appeal; in stead we would dispose of this appeal and the application for leave to appeal with liberty to file application for review of the order.

The period of limitation for filing application has expired long back. The appellant may file application for condonation of delay under Section 5 read with Section 14 of the Limitation Act and satisfy the learned Judge that he had taken recourse to the remedy of appeal under bona fide legal advice. We have no manner of doubt that learned Judge will consider the matter in right perspectives.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Praveen